

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES LITIGATION	§	
	§	MDL Docket No. 1446
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This Document Relates To:	§	
	§	
MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated,	§	Civil Action No. H-01-3624
	§	(Consolidated)
	§	
Plaintiffs,	§	<u>CLASS ACTION</u>
	§	
vs.	§	
	§	
ENRON CORP., et al.,	§	
	§	
Defendants.	§	
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THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al., Individually and On Behalf of All Others Similarly Situated,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	
	§	
KENNETH L. LAY, et al.,	§	
	§	
Defendants.	§	
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[Caption continued on next page]

OPPOSITION OF BANK DEFENDANTS TO THIRD-PARTY DEFENDANT
MICHAEL KRAUTZ’ MOTION FOR LEAVE TO TAKE FACT DEPOSITIONS
(Instrument No. 4524)

PAMELA M. TITTLE, <i>et al.</i> ,	§	
	§	
Plaintiffs,	§	Civil Action No. H-01-3913
	§	
vs.	§	
	§	
ENRON CORP., et al.,	§	
	§	
Defendants.	§	
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	§	
OFFICIAL COMMITTEE OF UNSECURED	§	
CREDITORS OF ENRON CORP.,	§	Civil Action No. H-04-0091
	§	
Plaintiffs,	§	
	§	
vs.	§	
	§	
ANDREW S. FASTOW, MICHAEL J. KOPPER,	§	
BEN GLISAN, JR., RICHARD B. BUY,	§	
RICHARD A. CAUSEY, JEFFREY K.	§	
SKILLING, KENNETH L. LAY, JEFFREY	§	
McMAHON, JAMES V. DERRICK, JR.,	§	
KRISTINA M. MORDAUNT, KATHY LYNN,	§	
ANNE YAEGER-PATEL, ARTHUR	§	
ANDERSEN, LLP, AND CARL FASTOW, AS	§	
ADMINISTRATOR OF THE FASTOW FAMILY	§	
FOUNDATION,	§	
	§	
Defendants.	§	
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ELAINE L. CHAO, SECRETARY OF THE	§	
UNITED STATES DEPARTMENT OF LABOR,	§	
	§	Civil Action No. H-03-2257
Plaintiff,	§	(Consolidated with H-01-3913)
	§	
vs.	§	
	§	
ENRON CORP., et al.,	§	
	§	
Defendants.	§	
	§	

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

	x	
	:	
In re:	:	Chapter 11
	:	No. 01-16034(AJG)
ENRON CORP., et al.	:	
	:	Jointly Administered
Debtors.	:	
	x	
	:	
ENRON CORP., et al.	:	
	:	
Plaintiffs,	:	
	:	Adversary Proceeding
v.	:	No. 03-09266 (AJG)
	:	
CITIGROUP INC., et al.	:	
	:	
Defendants.	:	
	x	

**OPPOSITION OF THE BANK DEFENDANTS TO THIRD-PARTY DEFENDANT
MICHAEL KRAUTZ' MOTION FOR LEAVE TO TAKE FACT DEPOSITIONS
(INSTRUMENT NO. 4524)**

The undersigned defendants (collectively the "Bank Defendants")¹ respectfully submit this Opposition to Third-Party Defendant Michael Krautz' Motion for Leave to Take Fact Depositions (Instrument No. 4524) pursuant to the Court's Order relating to Third-Party Michael Krautz' leave to take fact depositions (Instrument No. 4747). Michael Krautz ("Krautz") was added to *Newby v. Enron Corp.*, No. H-01-3624 (S.D. Tex) pursuant to certain Bank Defendants' Cross-Claims and Third-Party Complaint for Contribution and Indemnification ("Third-Party Complaint"), with which he was served on July 28, 2005. Pursuant to this Court's Amended Deposition Protocol

¹ This opposition is submitted on behalf of defendants JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., J.P. Morgan Securities Inc., Citigroup Inc., Citibank, N.A., Citigroup Global Markets Inc. (formerly Salomon Smith Barney Inc.), Citigroup Global Markets Ltd. (formerly known as Salomon Brothers International Limited), Barclays PLC, Barclays Bank PLC, Barclays Capital Inc., Credit Suisse First Boston LLC (n/k/a Credit Suisse Securities (USA) LLC), Credit Suisse First Boston (USA), Inc. (n/k/a Credit Suisse (USA) Inc.), Pershing LLC, Merrill, Lynch & Co., Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Canadian Imperial Bank of Commerce, CIBC World Markets Corp., CIBC World Markets plc, Toronto Dominion Bank, Toronto Dominion Holdings (USA), Inc., TD Securities, Inc., TD Securities (USA) Inc., Toronto Dominion (Texas) Inc., Deutsche Bank AG, Deutsche Bank Securities Inc., Deutsche Bank Trust Company Americas, Lehman Brothers Holdings Inc., Lehman Brothers Inc., Lehman Commercial Paper Inc., The Royal Bank Of Scotland Group plc, The Royal Bank of Scotland plc, National Westminster Bank Plc, Greenwich Natwest Structured Finance, Inc., and Greenwich Natwest Ltd., Campsie Ltd. Certain of the bank defendants who join in this motion—namely, Royal Bank of Scotland and Toronto Dominion Bank, and their respective affiliates—are covered by the stay of discovery under the Private Securities Litigation Reform Act (15 U.S.C. Sec. 78u-4(b)(3)(B)), and join here without waiving any rights with respect to that stay.

Order, entered December 23, 2004, fact discovery in the consolidated and coordinated Enron-related cases ended on November 30, 2005 – four months after Krautz received notice that he was added as a party to *Newby*. Krautz tried to reopen fact discovery more than three months after it ended, and did not even identify four of the five witnesses whose depositions he now seeks. Krautz was given the opportunity to participate in the fact discovery process, and Krautz' failure to avail himself fully of this opportunity should not grant him exception from this Court's deadlines.

As of July 28, 2005, the deposition schedule was far from set in stone. Deposition Cycle 13 of 16² had not yet begun, and Krautz still had the opportunity to nominate witnesses for deposition. Deposition Scheduling Committee members sent hundreds of emails to coordinate the rapidly changing deposition schedule between July 28, 2005 and the close of fact discovery, adding, rescheduling, and removing numerous witnesses in those final months. For example, the following witnesses, who had not been nominated until August 18, 2005, nevertheless were deposed during the Court-ordered fact discovery period: Peggy Capomaggi, deposed on November 21, 2005; Michael Heim, deposed on November 14, 2005; Paul Tice, deposed on November 17, 2005; Edward Tirello, deposed on November 15, 2005; a Lehman 30(b)(6) relating to Dynegy Merger Negotiations, deposed on November 3-4, 2005; and a Principal Global 30(b)(6) relating to topics involving Osprey and Whitewing, deposed on November 16, 2005.

² Cycle 16 was an abbreviated Cycle, consisting of two and a half weeks rather than the standard four weeks.

Krautz had the opportunity to participate in fact discovery in accordance with the Deposition Protocol Order.

Krautz' claim that he is entitled to fact discovery on his own terms because he did not accomplish what he wanted to during fact discovery is unpersuasive. As chronicled in the Bank Defendants' Sixth Quarterly Report to the Courts on the Progress of the Deposition Process, the fact discovery period was fraught with many problems not adequately remedied throughout its eighteen-month course. The Bank Defendants nevertheless took as many depositions as they could under the applicable rules prior to conclusion of fact discovery. Krautz undoubtedly is not alone in the desire to take additional depositions – over 450 witnesses were nominated but not deposed during the course of fact discovery. This Court set a fact discovery deadline, and one party's inability to take all of the depositions it would like does not change this fact.

Accordingly, the Bank Defendants respectfully request that this Court deny Krautz' Motion for Leave to Take Fact Depositions.

Dated: June 14, 2006

Respectfully submitted,

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